



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Buckingham Manufacturing Co., Inc.
File: B-239999
Date: September 17, 1990

H. Andrew Batty, Jr. for the protester.
Christy L. Gherlein, General Services Administration, for the agency.
Sylvia Schatz, Esq., David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly determined bid ambiguous and thus nonresponsive where insertion of unsolicited part number suggested that the bidder possibly intended to furnish that specific part number whether or not it complied with solicitation specifications and nothing else in the bid or other data reasonably known to be available before bid opening resolved the ambiguity.

DECISION

Buckingham Manufacturing Co., Inc. protests the rejection of its bid as nonresponsive, and the subsequent award of a contract for lineman's tool bags to Estex Manufacturing Company, under invitation for bids (IFB) No. FCEP-AR-900097-S-1-17-90, issued by the General Services Administration (GSA) for tool bags and rolls.

We deny the protest.

The IFB described lineman's tool bags by National Stock Number (NSN) and required that the bags conform with Federal Specification GGG-B-50A, as amended. At bid opening, Buckingham was the low bidder on the item. Upon noticing that Buckingham had written "P/N 314" on its bid schedule immediately to the left of the NSN listing for the item, the contracting officer asked the agency's technical division whether the tool bags represented by that part number met the IFB specification; the technical division responded that there was insufficient information on Buckingham's "P/N 314" tool bags to make this determination. In addition, the

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contracting officer reviewed a 1985 contract between Buckingham and GSA for the same item but found no reference to "P/N 314" in the contract and thus was unable to determine whether the tool bag Buckingham was offering to supply under the current solicitation was the same tool bag supplied under the 1985 contract. The contracting officer also checked the technical library, but failed to find any reference to "P/N 314" in a 1985 Buckingham commercial catalog, the most recent one available. Consequently, the contracting officer rejected Buckingham's bid on the basis that unsolicited part number notation made it unclear whether the firm was offering to meet the specifications, rendering it ambiguous and thus nonresponsive. Upon learning of the subsequent award to Estex, the next low bidder, Buckingham filed this protest.

Buckingham first argues that the notation on its bid schedule should not have been considered significant because it was not positioned near either the description or the price for the item in question. Buckingham further contends that, in any case, the notation was merely an internal number relating to the firm's computer system, and was not intended to qualify its bid, since the tool bags it offered in fact conformed to the federal specification. In support of this contention, Buckingham has submitted for the first time with its comments on the agency report invoices from its 1985 GSA contract which appear to indicate that tool bags identified as "13-314" were supplied.

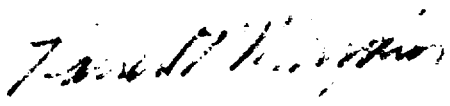
The insertion of an unsolicited part number in a bid, even where included merely for a bidder's internal control purposes, creates an ambiguity in the bid. IFR Sys., Inc., B-222533, Aug. 26, 1986, 86-2 CPD ¶ 224. The ambiguity arises because the inclusion of a part number is not a clear indication of whether the bidder is offering to comply completely with the specifications, or is merely offering to supply equipment that may or may not conform to the specifications. Infab Corp., B-238423, May 29, 1990, 90-1 CPD ¶ 506. Therefore, a contracting officer must reject such a bid as nonresponsive unless either the bid contains an express statement, or the contracting officer determines from data available on the specified part before bid opening, that the specified equipment conforms to the specifications. Id.

Since the notation "P/N 314" was positioned next to the description of the tool bags, immediately to the left of the NSN, we find that the agency reasonably concluded Buckingham's notation evidenced the firm's intent to bid "P/N 314" for the item. It follows that Buckingham's offer of an unsolicited part number could reasonably be viewed as

raising a question as to whether Buckingham intended to comply with the specifications, or furnish that specific part number whether or not it met the applicable federal specification. Nothing in the bid itself, Buckingham's commercial literature, or other data available before bid opening resolved this ambiguity concerning what Buckingham proposed to furnish; accordingly, Buckingham's bid was properly deemed nonresponsive.

The invoices from Buckingham's 1985 contract were submitted after bid opening, and therefore it would have been improper for the agency to consider them in determining the responsiveness of Buckingham's bid; a bidder's intention to comply with the specifications must be determined from the bid itself at bid opening, and only material then available may be considered. Caprock Vermeer Equip., Inc., B-217088, Sept. 3, 1985, 85-2 CPD ¶ 259. The agency had no information prior to bid opening that invoices identifying the offered model of tool bag as having been supplied under the 1985 contract existed; in these circumstances, the agency had no reason to check its files for any records of deliveries under prior contracts with Buckingham before rejecting Buckingham's bid as nonresponsive. In any case, the invoices would not have resolved the ambiguity created by the notation on Buckingham's bid of "P/N 314," since they referred to what appears to be a different part number, "13-314," as having been supplied under the prior contract.

The protest is denied.


James F. Hinchman
General Counsel